



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
SPRINGS VALLEY JR.-SR. HIGH
SCHOOL**

JAMES H. HELTON, JR. V. STATE OF INDIANA

Appeal from:
Elkhart Superior Court
The Honorable George
Biddlecome, Judge

Oral Argument:
Tuesday, April 22, 2008
10:30—11:10 a.m.
20 minutes each side

CRIMINAL LAW

- 1) Was an invalid search warrant used to obtain evidence against Mr. Helton?
- 2) Was Mr. Helton denied the effective assistance of trial counsel when counsel did not move to suppress that evidence?

Facts and Procedural History

On August 26, 2002, Elkhart County Sheriff's Lieutenant R.D. Drinkwine issued an affidavit seeking a search warrant for James Helton's residence. In that affidavit, Lieutenant Drinkwine stated that a confidential informant ("CI") told him that he had observed at Helton's residence: large amounts of methamphetamine; several firearms; and Helton dealing methamphetamine. In the affidavit, Lieutenant Drinkwine also stated that Helton had prior drug-related convictions in 1985, 1988, and 1989 and that the Sheriff's Department had received two anonymous tips since May 2002 that Helton was dealing methamphetamine.

Lieutenant Drinkwine obtained and executed a search warrant the same day, and officers found a total of 406 grams of

methamphetamine and 66 grams of marijuana at Helton's residence, among other dealing-related items. The State charged Helton with Possession of Methamphetamine with Intent to Deliver, as a Class A felony, and Possession of a Controlled Substance, as a Class D felony. The trial court appointed a public defender to represent Helton at trial.

Following the first day of trial, during which no evidence obtained pursuant to the search warrant was offered into evidence, Helton pleaded guilty to possession of methamphetamine with intent to deliver, as a Class A felony, and the State agreed to dismiss the other charge. The trial court accepted the plea agreement, entered judgment accordingly, and sentenced Helton to forty-five years imprisonment. Helton did not take a direct appeal.

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CASE SYNOPSIS



Helton filed an amended petition for post-conviction relief in February 2007, alleging in relevant part that he was denied the effective assistance of trial counsel. In particular, Helton alleged that the August 26, 2002, search warrant was invalid and that his trial counsel was ineffective when he did not file a motion to suppress the evidence obtained pursuant to the warrant. Following a hearing, the post-conviction court denied his petition. This appeal ensued.

Parties' Arguments

On appeal, Helton contends that the post-conviction court erred when it denied his petition alleging ineffective assistance of trial counsel, which violated his constitutional right to effective legal representation. In particular, Helton contends that, had his trial counsel filed a pre-trial motion to suppress the evidence obtained pursuant to the search warrant, the trial court would have likely granted that motion, he would not have pleaded guilty, and the State would not have had sufficient evidence to convict him. In support of that contention, Helton asserts that the search warrant affidavit was not supported by probable cause because it was based on uncorroborated hearsay from a source whose credibility was unknown.

The United States Supreme Court has held that uncorroborated hearsay from a source whose credibility is itself unknown, standing alone, cannot support a finding of probable cause to issue a search warrant. Illinois v. Gates (1983). The federal test for ensuring the reliability of a hearsay statement in a

probable cause determination allows the use of hearsay only if the totality of the circumstances corroborates the hearsay. Lloyd v. State (Ind. Ct. App. 1997) The reliability of hearsay can be established in a number of ways, including where: (1) the informant has given correct information in the past, (2) independent police investigation corroborates the informant's statements, (3) some basis for the informant's knowledge is demonstrated, or (4) the informant predicts conduct or activities by the suspect that are not ordinarily easily predicted. Jagers v. State (Ind. 1997).

Here, the probable cause affidavit provides in relevant part:

8) That [the confidential informant] saw what he described as a "pound of meth", a triple-beam scale, several syringes, two or three police scanners, a police code book, a video monitor that receives images from outside the residence Saturday, August 24, 2002 when he visited the residence . . . , all of which the affiant recognizes as items used to facilitate the sale of illegal drugs.

* * *

11) That [the confidential informant] observed James Howard Helton sell two "8-balls" of methamphetamine for \$100.00 each while at the residence, on August 24, 2002.

12) That the affiant confirmed that James Howard Helton was convicted on 1-9-89 for Possession of Cocaine, a Class D Felony. This information was confirmed by a NCIC inquiry.

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13) That the affiant was involved in the arrest of James Howard Helton, on 12-20-85 for Dealing Cocaine, by the Elkhart Police Department.

14) That James Howard Helton was arrested on 2-12-88, by the Elkhart Police Department for Possession of Narcotic Drug.

* * *

16) That the Elkhart County Drug Task Force has received two anonymous citizen complaints since May 2002, that state James Howard Helton is selling methamphetamine and in possession of firearms.

17) That [the confidential informant] gave the affiant a detailed description of the residence, including the interior floor plan. That the affiant was able to confirm the description of the residence visually.

The State contends that Lieutenant Drinkwine's affidavit was adequately supported by probable cause and that the search warrant was valid. The State also contends that Helton did not properly authenticate the search warrant at the

hearing on his post-conviction petition and that the post-conviction court only admitted it for the limited purpose of showing that Helton's trial counsel had received it in the course of his representation of Helton. Thus, the State asserts that Helton did not properly present any evidence to support his petition for post-conviction relief. Further, the post-conviction court found a "fatal flaw" in that it believed Helton had not "connect[ed] the affidavit and search warrant in question to the subject search or to the drugs in question[.]" Finally, the State contends that Helton cannot show that his trial counsel was ineffective for pursuing a valid trial strategy.

In sum, the Court of Appeals is asked to decide (1) whether the search warrant was invalid, and, if so, (2) whether Helton's trial counsel was ineffective in not filing a motion to suppress the evidence obtained pursuant to the warrant.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 214th case "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Edward W. Najam, Jr. (Monroe County)

- Judge of the Court of Appeals since December 1992

Edward W. Najam, Jr., of Bloomington, Monroe County, was appointed to the Court of Appeals by Governor Evan Bayh in 1992 and was retained by the electorate in 1996 and 2006.

Judge Najam graduated from the Indiana University High School in Bloomington, where he grew up, and attended Indiana University at Bloomington. At I.U. he earned a B. A. in political science, with highest distinction, in 1969, was elected to Phi Beta Kappa, and was elected Student Body President. Judge Najam earned his J.D. from Harvard Law School in 1972.

After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for eighteen years. He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana. He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County Family YMCA Board of Directors.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the

Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure. In 2001, he organized and co-chaired "Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts," attended by judges from twenty-two states, the first such national conference. He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a member of the Indiana University School of Law – Bloomington Board of Visitors, a Fellow of the Indiana and Indianapolis Bar Foundations, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES**Hon. Melissa S. May (Vanderburgh County)**

- Judge of the Court of Appeals since April 1998



Melissa S. May was appointed to the Court of Appeals in April of 1998 by Governor Frank O'Bannon and was retained on the Court by election in 2000. Judge May was born in Elkhart, Indiana. She graduated from Indiana University-South Bend with a B.S. in 1980 and from Indiana University School of Law-Indianapolis with a J.D. in 1984.

Between law school and her appointment to the Court, Judge May practiced law in Evansville, Indiana, focusing on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on its Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, and as co-chair of the Futures Taskforce. In addition, she was a member of the Board of Directors of the

Indiana Continuing Legal Education Forum from 1994-1999 and has been the co-chair of ICLEF's Indiana Trial Advocacy College from 2001-2005. She is a fellow of the Indiana Bar Foundation, as well as of the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 till December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission. In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course. Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

ATTORNEYS FOR THE PARTIES

For Appellant, James H. Helton, Jr.:

Jon Chenoweth
Indiana Public Defender
Indianapolis



Jon Chenoweth was born and raised in Indianapolis, and went to North Central High School. As an undergrad, he attended Valparaiso University, where he received a B.A. in history with a minor in political science. Mr. Chenoweth then went to law school at the Indiana University campus in Indianapolis. During his third year, he participated in the Criminal Defense Clinic, where students took cases from the Marion County Public Defender Agency and represented the clients in the courtroom with faculty supervision. The clinic hooked Mr. Chenoweth on criminal law, and defense work in

particular. After graduating, he started working at the office of the State Public Defender in 2004. The Public Defender represents incarcerated, indigent clients in post-conviction relief proceedings around the state.

Mr. Chenoweth lives in Indianapolis with his wife and daughter. In their free time, the Chenoweths like to swim, hike, and watch Colts games. “My daughter’s favorite player is Joseph Addai, and she knows that the Patriots are cheaters,” he says.

For Appellee, State of Indiana:

Justin Roebel
Deputy Attorney General
Indianapolis

Justin Roebel is originally from Fort Wayne, Indiana. He graduated from Yale College in 1999 and Indiana University School of Law in Indianapolis in 2002. During law school, Mr. Roebel was an Associate Editor of the Indiana Law Review and chairman of the Client Counseling Competition.

Mr. Roebel has served in the Appellate Division of the Office of the Attorney General since 2002. . He has acted as lead counsel for the State in hundreds

of cases in the Indiana Court of Appeals, the Indiana Supreme Court, and the U.S. Court of Appeals for the Seventh Circuit.

In 2002, Mr. Roebel was a co-recipient of the National Association of Attorneys General Best Brief Award for his contribution to the Response to Certiorari Brief in *A Woman’s Choice – East Side Women’s Clinic v. Carl Brizzi*. Previously, he worked as an intern for the Office of the Attorney General and the City of Fort Wayne.